**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO. 32 OF 1996.**

Punjab & Sind Bank. ... Plaintiff.

Versus.

M/s.Sui and Dhaga and others. ... Defendants.

Shri Kirit Mody i/by M/s.Haridas & Co. for the Plaintiff.

**CORAM : ABHAY S.OKA, J.**

**DATED : 24th Sept., 2007.**

**P.C.:**

1. Heard the learned Counsel appearing for the Plaintiffs. He has placed on record an affidavit of service dated 21st July 2007 of one Shri R.J.Tiwari, a Special Bailiff of the Sheriff of Mumbai. The said affidavit is marked "X" for identification and is taken on record. The affidavit records that the writ of summons has been duly served to the 3rd Defendant on 3rd March 1997. The learned Counsel appearing for the Plaintiffs states that the Plaintiffs are not pressing the suit as against the 1st, 2nd and 4th Defendants. In view of this statement, the suit stands dismissed as against the said Defendants for want of prosecution.

2. It is pointed out that the 3rd Defendant has not entered appearance within the time stipulated by law. Hence in view of Sub-rule (3) of Rule 2 of order XXXVII of the Code of Civil Procedure, 1908 the contents of the plaint shall be deemed to have been admitted by the 3rd

Defendant. The learned Counsel appearing for the Plaintiffs has tendered on record a compilation of original documents. The said compilation is marked as "Y" (collectively) for identification and the same is taken on record.

3. The Plaintiffs are entitled to a decree as against the 3rd Defendant. The Plaintiffs have prayed for interest at the rate of 21.25% per annum with quarterly rests from the date of filing of the suit till the date of payment and/or realisation. Considering the facts and circumstances of the case, the Plaintiffs will be entitled to interest at the rate of 18% per annum from the date of institution of the suit till realisation or payment.

4. Hence the suit is decreed as against the 3rd Defendant as prayed with modification that the interest payable on the amount will be at the rate of 18% per annum from the date of filing of the suit till payment or realisation. Certified copy is expedited.

5. The Plaintiffs will be entitled to refund of Court fees, if any, as per the rules.

**Judge.**